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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204186
Party	Defendant Lorillard Technologies, Inc.
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Submission	Motion to Suspend for Civil Action
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of:

Application Serial Nos.: 85/092,665, 85/131287, and 85/131965

Marks: BLU CIGS, BLU, and BLU and Design

Filing Dates: July 26, 2010, September 16, 2010, and September 17, 2010

Published: November 8, 2011 and November 29, 2011

ZIPPMARK, INC.,)	
)	
Opposer)	
)	Opposition No. 91204186
v.)	
)	
LORILLARD TECHNOLOGIES, INC.)	
(successor to BLEC, LLC),)	
)	
Applicant)	

MOTION TO SUSPEND OPPOSITION
PENDING FINAL DETERMINATION OF A CIVIL ACTION

Lorillard Technologies, Inc. (successor to BLEC, LLC) (“Applicant”) hereby moves the Trademark Trial and Appeal Board (“Board”) for an order, pursuant to 37 C.F.R. § 2.117(a), suspending the instant Opposition proceeding against Applicant. In support of this motion, Applicant states as follows:

SUMMARY OF FACTS

On or about April 2012, Applicant acquired all rights and interest in BLEC, LLC’s trademarks, including the ones at issue in the instant Opposition proceeding, i.e., BLU CIGS, BLU, and BLU and Design (the “BLU Family of Marks”). As the successor-in-interest of the BLU Family of Marks, Applicant exclusively licensed use of BLU Family of Marks to LOEC, Inc. (“LOEC”).

On October 16, 2013, the Board granted a Joint Stipulation and Motion to Suspend the Proceedings for Settlement Discussions, suspending the instant Opposition proceeding through

April 14, 2014. A true and correct copy of the Board's grant of the Motion to Suspend is attached hereto as **Exhibit A**.

After multiple settlement discussions between the parties, the parties were unable to resolve their dispute. Accordingly, on April 7, 2014, LOEC filed a civil action against Opposer and its exclusive licensee, Zippo Manufacturing Company ("Zippo"), in the United States District Court for the Central District of California, styled as *LOEC, Inc. v. ZippMark, Inc. et al.*, Case No. 2:14-cv-02596-RGK-FFM (the "Civil Action"). The Civil Action seeks a declaratory judgment that the BLU Family of Marks do not infringe on Opposer's ZippoBLU and BLU marks, the marks cited by Opposer against the BLU Family of Marks in the instant Opposition proceeding. A true and correct copy of the Civil Action Complaint is attached hereto as **Exhibit B**.

The Complaint shows that the Civil Action filed by LOEC involves issues that are directly in common with those issues in the instant Opposition proceeding, including whether there is a likelihood of confusion between Applicant's BLU Family of Marks as used for the goods set forth in applications which are the subject of the instant Opposition proceeding, and Opposer's ZippoBLU and BLU marks.

ARGUMENT

A decision in the Civil Action would be binding on the Board, but a decision by the Board would not be binding as to the issues in the Civil Action. *See* TBMP § 510.02(a); *see also The Toro Company v. Hardigg Indus., Inc.*, 187 USPQ 689 (TTAB 1975). Accordingly, whenever it comes to the attention of the Board that parties to a pending proceeding are involved in a civil action which may be dispositive of the Board proceeding, the Board may, either by motion or on its own accord, suspend its proceeding until there is a final determination of the civil action. *See* 37 C.F.R. § 2.117(a); TBMP § 510.02(a); *see also Careerxchange Inc. v. Corpnet Infohub Ltd.*, 80 USPQ.2d 1046 (TTAB 2005); *General Motors Corp. v. Cadillac Club*

Fashions Inc., 22 USPQ.2d 1933 (TTAB 1992) (Board suspending proceedings following review of complaint in civil action which indicated that a decision by the district court would be dispositive of the issues in proceeding before the Board).

Thus, inasmuch as the Civil Action involves issues common with the instant Opposition proceeding before the Board, Applicant believes that the Civil Action is dispositive of issues currently pending in the instant Opposition proceeding. *See The Other Telephone Company v. Connecticut National Telephone Company, Inc.*, 181 USPQ 125 (TTAB 1974) (civil court action seeking court determination of respective rights of the parties to use in commerce a certain trademark found by TTAB to be dispositive of issues pending in proceeding before Board). In an effort to avoid duplicative proceedings and potentially conflicting outcomes, suspension of the Opposition proceeding herein would be appropriate.¹

WHEREFORE, Applicant respectfully requests that the Board order a suspension of the instant Opposition proceeding pending a final determination of the Civil Action.

Respectfully submitted,
LORILLARD TECHNOLOGIES, INC.

Dated: April 8, 2014

By: /s/ Eric T. Fingerhut

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Suite 300 West
Washington, DC 20005
Counsel for BLEC, LLC

¹ Because Applicant has not been served with a potentially dispositive motion, there can be no claim by Opposer that, by filing the instant motion, Applicant is merely seeking to escape that motion by filing a civil action and then moving to suspend before the Board has decided the potentially dispositive motion. See 37 C.F.R. § 2.117(b).

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion To Suspend Opposition Pending Final Determination Of A Civil Action was served on the Opposer by depositing same in the United States mail, first class, postage pre-paid, April 8, 2014 to:

David S. Elkins
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/s/ Eric T. Fingerhut
Eric T. Fingerhut

EXHIBIT A

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

October 16, 2013

PROCEEDING NO. 91204186
ZippMark, Inc.

v.

Lorillard Technologies,
Inc.

MOTION TO SUSPEND GRANTED

Lorillard Technologies, Inc.'s motion filed, Oct 16, 2013, to suspend this proceeding is granted. Accordingly, proceedings herein are suspended through Apr 14, 2014, subject to the right of either party to request resumption at any time. During the suspension period, the parties shall notify the Board of any change of address for either the parties or their counsel.

Unless the parties sooner request resumption, upon conclusion of the suspension period, proceedings shall resume without further notice or order from the Board, upon the schedule set out in the motion. If an answer has not been filed, the defendant is allowed the time set forth in the motion in which to file an answer. The parties are allowed THIRTY DAYS from resumption in which to serve responses to any outstanding discovery requests.

EXHIBIT B

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6 Attorneys for Plaintiff
7 LOEC, INC.

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

11 LOEC, INC., a Delaware corporation,
12

13 Plaintiff,

14 vs.

15 ZIPPMARK, INC., a Delaware
corporation; and ZIPPO
16 MANUFACTURING COMPANY, a
Pennsylvania corporation,

17 Defendant.
18
19

Case No.

**COMPLAINT FOR DECLARATORY
JUDGMENT OF TRADEMARK
NON-INFRINGEMENT AND
LACHES**

DEMAND FOR JURY

20 Plaintiff LOEC, Inc. ("LOEC"), for their Complaint herein, alleges as follows:

21 **NATURE OF ACTION**

22 1. This is an action for declaratory judgment arising under the Federal
23 Declaratory Judgment Act (28 U.S.C. §§ 2201 and 2202).
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THE PARTIES

2. Plaintiff LOEC is a corporation organized and existing under the laws of Delaware, with a principal place of business at 9101 Southern Pine Boulevard, Suite 250, Charlotte, North Carolina 28273. LOEC is the leading electronic cigarette company in the United States. It manufactures, markets, and sells a variety of electronic cigarettes and related products throughout the United States under the well-known federally-registered BLU ECIGS mark, as well as the BLU CIGS, BLU, BLU (design mark), and BLU CART marks (collectively referred to as the “BLU Family of Marks”), which are owned by Lorillard Technologies, Inc. (“LTI”) and exclusively licensed to LOEC. LTI acquired all rights and interest in the BLU Family of Marks on or about April 2012 from BLEC, LLC (“BLEC”) through an asset and goodwill acquisition. As the predecessor-in-interest of the BLU Family of Marks, BLEC is hereinafter subsumed into “LOEC.”

3. Defendant ZippMark, Inc. (“ZippMark”) is a corporation organized under the laws of Delaware with its principal place of business in Wilmington, Delaware. ZippMark claims ownership of several U.S. trademark registrations for the marks BLU and ZIPPOBLU in connection with cigarette and utility lighters and related products (collectively referred to as the “Zippo BLU Marks”). Based on information and belief, ZippMark is a trademark holding company and licenses Zippo Manufacturing Company to manufacture, distribute, advertise, and sell cigarette and utility lighter and related products within the United States under the Zippo BLU Marks.

4. Defendant Zippo Manufacturing Company (“Zippo”) is a corporation organized under the law of Pennsylvania with its principal place of business in Bradford, Pennsylvania. Based on information and belief, Zippo is ZippMark’s licensee with regard to the manufacture, distribution, advertisement, and sale of cigarette and utility lighter and related products within the United States under the Zippo BLU Marks.

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5. Defendants ZippMark and Zippo are collectively referred to herein as “Defendants.”

6. Based on information and belief, Defendants are responsible for each of their acts and for their conduct, which are the true legal causes of the relief herein alleged.

VENUE AND JURISDICTION

7. Jurisdiction is proper in this Court because this litigation arises under federal law, namely 17 U.S.C. § 1051 et seq. (Lanham Act). Accordingly, the Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a) (trademarks), and 28 U.S.C. § 2201 (Declaratory Judgment Act).

8. This Court has personal jurisdiction over Defendants because Defendants, on information and belief, have systematically and continuously engaged in substantial business activities in and directed to the State of California and this District, including contacts with California corporations and the advertising and sale of their products to California residents within this District.

9. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and 1391(c) in that substantial injury occurred and continues to occur in this District and Defendants transact business in this District. Defendants are subject to the personal jurisdiction of this Court and amenable to service of process pursuant to the California Long-Arm Statute, Cal. Civ. Proc. Code § 413.10, and Fed. R. Civ. P. 4(e).

10. An actual case or controversy has arisen between the parties. In fact, ZippMark, Inc. has filed oppositions (Nos. 91204186 and 91215582) with the United States Patent and Trademark Office’s Trademark Trial and Appeal Board against LTI’s applications to register the marks BLU, BLU & Design, BLU CIGS, and BLU CART. Defendants also have threatened litigation against LOEC and have asserted that LOEC’s marketing and sale of electronic cigarettes and related products under the BLU Family of Marks constitutes infringement of Defendants’ Zippo BLU Marks. Accordingly, LOEC has a real and reasonable apprehension of being sued for

1 federal trademark infringement under the Lanham Act by Defendants. Defendants’
 2 statements have caused and continue to threaten to cause injury to Defendants, most
 3 notably by placing a cloud on Plaintiffs’ right to continue using their BLU Family of
 4 Marks without disruption.

5 **GENERAL ALLEGATIONS**

6 **LOEC’s Well-Known BLU Family of Marks**

7 11. For years, LOEC has continuously used and extensively promoted the
 8 BLU Family of Marks in connection with the advertising, promotion, and sale of
 9 electronic cigarettes and related products. LOEC has sold millions of BLU electronic
 10 cigarette products all over the world, including throughout the United States and in
 11 California. Through this investment, LOEC has built itself up as the leading
 12 electronic cigarette company in the United States and created considerable goodwill
 13 and a reputation for top quality electronic cigarette products.

14 12. In particular, LOEC has invested substantial time, money, and effort to
 15 distinguish its top quality BLU electronic cigarette products from other products by
 16 creating an association in the minds of consumers between those products and its
 17 distinctive “BLU” marks. As a result of LOEC’s efforts, LOEC has created such
 18 association and substantive goodwill in the BLU Family of Marks.

19 13. LTI is the owner, and LOEC is the exclusive licensee, of United States
 20 Trademark Registration No. 3,846,035 for the mark “BLU ECIGS” for “Cigarettes
 21 containing tobacco substitutes not for medical purposes; Electronic cigarettes for use
 22 as an alternative to traditional cigarettes; Smokeless cigarette vaporizer pipe; Tobacco
 23 substitutes,” with a first use date of May 1, 2009 (the “BLU ECIGS Mark”). A true
 24 and correct copy of United States Trademark Registration No. 3,846,035 is attached
 25 hereto as **Exhibit A**.

26 14. LTI is also the owner, and LOEC is the exclusive licensee, of the marks
 27 covered by the following United States Trademark Applications:

28 a. Application No. 85/092665, filed on July 26, 2010, to register

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1 “BLU CIGS” for “Electronic cigarettes containing tobacco substitutes not for medical
2 purposes that utilize electronic cigarette chargers and not lighters; electronic
3 cigarettes for use as an alternative to traditional cigarettes that utilize electronic
4 cigarette chargers and not lighters; smokeless cigarette vaporizer pipes that utilize
5 electronic cigarette chargers and not lighters” with a first use date of May 1, 2009
6 (the “BLU CIGS Mark”). A true and correct copy of the Trademark Application is
7 attached hereto as **Exhibit B**.

8 b. Application No. 85/131287, filed on September 16, 2010, to
9 register “BLU” for “Electronic cigarettes that utilize electronic cigarette chargers and
10 not lighters; electronic cigarettes for use as an alternative to traditional cigarettes that
11 utilize electronic cigarette chargers and not lighters; smokeless cigarette vaporizer
12 pipes that utilize electronic cigarette chargers and not lighters” with a first use date of
13 May 1, 2009 (the “BLU Mark”). A true and correct copy of the Trademark
14 Application is attached hereto as **Exhibit C**.

15 c. Application No. 85/131965, filed on September 17, 2010, to
16 register “BLU (design mark)” for “Electronic cigarettes that utilize electronic
17 cigarette chargers and not lighters; electronic cigarettes for use as an alternative to
18 traditional cigarettes that utilize electronic cigarette chargers and not lighters;
19 smokeless cigarette vaporizer pipes that utilize electronic cigarette chargers and not
20 lighters” with a first use date of May 1, 2009 (the “BLU Design Mark”). A true and
21 correct copy of the Trademark Application is attached hereto as **Exhibit D**.

22 d. Application No. 86/010437, filed on July 15, 2013 on an intent-to-
23 use basis, to register “BLU CART” for “Cartridges sold filled with glycerin-based
24 chemical flavorings in liquid form to produce the vapor and supply the flavoring for
25 electronic cigarettes; chemical flavorings in liquid form used to refill electronic
26 cigarette cartridges; Electronic smoking accessories, namely, electronic cigarette
27 flavor refill cartridges sold empty with a first use date of May 1, 2009 (the “BLU
28 CART Mark”). A true and correct copy of the Trademark Application is attached

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1 hereto as **Exhibit E**.

2 15. Since their first use in May 1, 2009, the BLU Family of Marks have
3 distinguished LOEC's electronic cigarettes from other electronic cigarettes and have
4 become well-known and instantly recognizable by consumers.

5 16. LOEC developed the idea of distinguishing its electronic cigarette from
6 traditional cigarettes as well as other electronic cigarettes by adding a blue-colored
7 LED tip which lights up in blue when a user inhales the electronic cigarette. LOEC
8 was the first seller of electronic cigarettes to use a blue-colored LED tip in connection
9 with an electronic cigarette in the United States, and it has therefore become an
10 important and distinguishable part of the BLU Family of Marks. LOEC's blue-
11 colored LED tip is well-known among consumers.

12 17. The designation "BLU," and its association with the color blue, was
13 selected as a simple and powerful brand which would distinguish LOEC's products in
14 the electronic cigarette marketplace.

15 18. Using the BLU Family of Marks and the distinct "BLU" brand and
16 color, LOEC became an innovator and the leading provider of electronic cigarettes in
17 the United States.

18 19. BLU was the first brand of electronic cigarette to sponsor a top 35 car in
19 the NASCAR Sprint Cup Series. Products featuring the BLU Family of Marks have
20 been given out in gift bags at major entertainment and sporting events, including the
21 Oscars, American Music Awards, MTV Movie awards, Grammy awards, Country
22 Music awards, and the American Century Golf Championship.

23 20. In 2011, LOEC ran a nationwide promotion to help raise money for the
24 Wounded Warrior Project using the BLU Family of Marks. Wounded Warrior
25 Project is a nonprofit organization that offers programs and services to severely
26 injured service members during the time between active duty and transition to civilian
27 life. Upon completion of the promotion, LOEC made a substantial donation to the
28 Wounded Warrior Project.

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21. The BLU Family of Marks has been heavily featured in national and local media, including in the Drudge Report, Jet Set Magazine, Rolling Stone, SPIN, Maxim, Men's Journal, Esquire, REELZ Channel, Si TV, MSG Network, BBC America, MAV TV, and USA Today. More recently, BLU electronic cigarettes were advertised in the 2014 Sports Illustrated Swimsuit Edition. The BLU Family of Marks have also been promoted in commercials featuring celebrity spokespersons Stephen Dorff and Jenny McCarthy.

22. Millions of BLU electronic cigarette products have been sold, and continue to be sold, at thousands of retail locations throughout the United States and via the internet, including at Walgreens, Cumberland Farms, Sheetz, BiLo, H-E-B, Ingles, Meijer, Jackson Foods, Weis Markets, Kerr Drug, Scolari's, and others.

23. LOEC and LTI have exclusive rights to use the BLU Family of Marks in connection with the sale and offer to sell of electronic cigarette products.

24. LOEC's BLU Family of Marks is inherently distinctive and has come to be associated by consumers with a single source.

25. As a result of LOEC's extensive use and promotion, the BLU Family of Marks has acquired secondary meaning and become widely recognized by the general consuming public and the trade as a designation of source identifying LOEC and the BLU Family of Marks' brand of electronic cigarettes.

Defendants' Actions

26. Based on information and belief, ZippMark is the owner, and Zippo is the licensee, of several United States Trademark Registrations for the Zippo BLU Marks, including:

- a. Registration No. 3,299,190 for "BLU and design" for "Lighters not of precious metal," registered on September 25, 2007;
- b. Registration No. 3,469,390 for "BLU and design" for "Hand-held cigarette and utility lighters of precious metal," registered on July 15, 2008;

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1 c. Registration No. 3,606,674 for “BLU” for “Fuel for lighters,”
2 registered on April 14, 2009;

3 d. Registration No. 3,680,360 for “BLU” for “Lighters not of
4 precious metal and lighters of precious metal,” registered on September 8, 2009;

5 e. Registration No. 3,299,195 for “ZIPPOBLU and design” for
6 “Lighters not of precious metal,” registered on September 25, 2007; and

7 f. Registration No. 3,464,056 for “ZIPPOBLU and design” for
8 “Cigarette and utility lighters of precious metal,” registered on July 8, 2008.

9 27. According to the information in ZippMark’s trademark registrations,
10 Defendants have been manufacturing, distributing, advertising, and selling cigarette
11 and utility lighter and related products within the United States in commerce under
12 the Zippo BLU Marks since 2007. Upon information and belief, any such uses have
13 been of limited volume, and sales of such products represent a very small percentage
14 of Zippo’s overall sales.

15 28. On March 7, 2012, ZippMark filed with the United States Patent and
16 Trademark Office’s Trademark Trial and Appeal Board a Combined Notice of
17 Opposition to LTI’s applications to register the BLU CIGS Mark, the BLU Mark, and
18 the BLU Design Mark, alleging that the registrations “would give rise [to] a
19 likelihood of confusion with [ZippMark’s] existing domestic and international BLU
20 registered and common law trademarks in violation of 15 U.S.C. §§ 1052(d) and
21 43(a)” (the “First TTAB Action”). A true and correct copy of the Combined Notice
22 of Opposition from the First TTAB Action is attached hereto as **Exhibit F**.

23 29. In Paragraph 9 of their Combined Notice of Opposition, ZippMark also
24 alleged that LTI’s “proposed use of the applied-for marks is indeed likely to (a) cause
25 confusion, mistake or deception with the Zippo BLU marks, and (b) result in the
26 mistaken belief that [LTI] or its BLU devices are in some way legitimately connected
27 with, licensed or approved by ZippMark.”
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1 30. On March 24, 2014, ZippMark filed with the United States Patent and
2 Trademark Office's Trademark Trial and Appeal Board a Notice of Opposition to
3 LTI's application to register the BLU CART Mark, alleging that the registration
4 "would violate 15 U.S.C. §§ 1052(d) and 43(a)" (the "Second TTAB Action"). A
5 true and correct copy of the Notice of Opposition from the Second TTAB Action is
6 attached hereto as **Exhibit G**.

7 31. In Paragraph 9 their Second TTAB Action Opposition, ZippMark also
8 alleged that LTI's "proposed use of the [BLU CART] mark is likely to (a) cause
9 confusion, mistake or deception with the Zippo BLU marks, and (b) result in the
10 mistaken belief that [LTI] or its 'BLU CART' products are in some way associated
11 with or sponsored by ZippMark or Zippo."

12 32. On April 7, 2014, LOEC and Defendants met to discuss LOEC's use of
13 the BLU Family of Marks. In that meeting, Defendants stated to LOEC that they
14 objected to LOEC's use of the BLU Family of Marks as infringing on the Zippo BLU
15 Marks and threatened litigation to enforce their alleged rights.

16 33. Based upon Defendants' First TTAB Action and Second TTAB Action
17 wherein they alleged that use of the BLU Family of Marks was likely to cause
18 consumer confusion and Defendants' statement to LOEC that LOEC's use of the
19 BLU Family of Marks is infringing upon Defendants' Zippo BLU Marks, there is an
20 actual controversy as to whether LOEC's BLU Family of Marks infringes upon
21 Defendants' Zippo BLU Marks.

22 34. Despite Defendants' statements, there is no likelihood of confusion,
23 mistake, or deception arising from the use of LOEC's BLU Family of Marks and
24 Defendants' Zippo BLU Marks. LOEC's and Defendants' goods manufactured, sold,
25 and advertised under their respective marks are noncompeting and LOEC's and
26 Defendants' consumers, who are sophisticated, are not likely to conclude that the
27 goods share a common source. In addition, LOEC's BLU Family of Marks and
28

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1 Defendants' Zippo BLU Marks have different commercial impressions in the
2 marketplace.

3 35. In addition, as a result of Defendants' conduct over the past five years,
4 including lollygagging in the First TTAB Action, failing to bring claims against
5 LOEC for trademark infringement and seeking an injunction to prevent LOEC's
6 continued use of the BLU Family of Marks, Defendants have acquiesced in and
7 consented to LOEC's use of the BLU Family of Marks, have unreasonably delayed in
8 asserting any claims of infringement and LOEC has been prejudiced thereby.
9 Accordingly, any trademark infringement claims Defendants may have against LOEC
10 are barred by the doctrines of laches, estoppel, acquiescence, and waiver.

11 36. Defendants have claimed that LOEC's use of the BLU Family of Marks
12 is infringing on the Zippo BLU Marks. LOEC denies this claim.

13 37. An actual, present and justiciable controversy has arisen between LOEC
14 and Defendants concerning LOEC's rights to use the BLU Family of Marks in
15 connection with electronic cigarettes and related products. Specifically, LOEC has a
16 real and reasonable apprehension of being sued for federal trademark infringement
17 under the Lanham Act by Defendants.

18 38. By this Complaint, LOEC seeks declaratory relief from this Court to
19 clarify LOEC's rights to the BLU Family of Rights and Defendants' rights in the
20 Zippo BLU Marks, and for judgment declaring that LOEC's use of the BLU Family
21 of Marks in connection with electronic cigarettes and related products does not
22 infringe upon Defendants' rights in the Zippo BLU Marks in connection with
23 cigarette and utility lighters and related products and that any trademark infringement
24 claims Defendants may have against LOEC are barred by the doctrines of laches,
25 estoppel, acquiescence, and waiver.

26 **CLAIM FOR RELIEF**

27 **(Declaratory Judgment of Non-Infringement of Trademarks and Laches)**

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1 39. LOEC incorporates by reference the allegations contained in paragraphs
2 1 through 38, inclusive.

3 40. LOEC seeks declaratory judgment from this Court that LOEC's use of
4 the BLU Family of Marks in connection with electronic cigarettes and related
5 products does not infringe upon Defendants' rights in the Zippo BLU Marks and that
6 any trademark infringement claims Defendants may have against LOEC are barred by
7 the doctrines of laches, estoppel, acquiescence, and waiver.

8 41. In connection with such declaratory judgment, LOEC seeks a
9 preliminary and permanent injunction enjoining and restraining Defendants from
10 asserting their rights against LOEC's use and registration of the BLU Family of
11 Marks in connection with electronic cigarettes and related products.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, LOEC, Inc. respectfully requests that the Court:

- 14 1. Enter judgment according to the declaratory relief sought;
15 2. Enter a preliminary and permanent injunction according to the injunctive
16 relief sought;
17 3. Enter an order directing the United States Patent and Trademark Office's
18 Trademark Trial and Appeal Board to dismiss ZippMark's First TTAB
19 Action and Second TTAB Action against LTI's applications to register
20 the BLU CIGS Mark, the BLU Mark, the BLU Design Mark, and the
21 BLU CART mark;
22 4. Award LOEC their attorneys' fees and costs in this action; and

23 ///

24 ///

25 ///

26 ///

27 ///

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1 5. Enter such other further relief to which LOEC may be entitled as a
2 matter of law or equity, or which the Court determines to be just and
3 proper.
4

5 Dated: April 7, 2014

DYKEMA GOSSETT LLP

7 By: /s/ Allan Gabriel
8 Allan Gabriel
9 Walead Esmail
 Attorneys for Plaintiff LOEC, INC.

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DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, LOEC, Inc. hereby demands a jury trial on all issues so triable.

Dated: April 7, 2014

DYKEMA GOSSETT LLP

By: /s/ Allan Gabriel

Allan Gabriel
Walead Esmail
Attorneys for Plaintiff LOEC, INC.

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EXHIBIT A



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BLU ECIGS

Word Mark	BLU ECIGS
Goods and Services	IC 034. US 002 008 009 017. G & S: Cigarettes containing tobacco substitutes not for medical purposes; Electronic cigarettes for use as an alternative to traditional cigarettes; Smokeless cigarette vaporizer pipe; Tobacco substitutes. FIRST USE: 20090501. FIRST USE IN COMMERCE: 20090501
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Trademark Search Facility Classification Code	LETTER-3-OR-MORE BLU-ECIGS Combination of three or more letters as part of the mark
Serial Number	77692962
Filing Date	March 17, 2009
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	February 2, 2010
Registration Number	3846035

International

Registration Number 1051365

Registration Date September 7, 2010

Owner (REGISTRANT) BLEC, LLC LIMITED LIABILITY COMPANY NEVADA 401 N Tryon Street, Suite 1080 Charlotte NORTH CAROLINA 28202

(LAST LISTED OWNER) LORILLARD TECHNOLOGIES, INC. CORPORATION DELAWARE 714 GREEN VALLEY ROAD GREENSBORO NORTH CAROLINA 27408

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Blake E. Vande Garde

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ECIGS" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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EXHIBIT B



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BLU CIGS

Word Mark	BLU CIGS
Goods and Services	IC 034. US 002 008 009 017. G & S: Electronic cigarettes containing tobacco substitutes not for medical purposes that utilize electronic cigarette chargers and not lighters; electronic cigarettes for use as an alternative to traditional cigarettes that utilize electronic cigarette chargers and not lighters; smokeless cigarette vaporizer pipes that utilize electronic cigarette chargers and not lighters. FIRST USE: 20090501. FIRST USE IN COMMERCE: 20090501
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85092665
Filing Date	July 26, 2010
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	November 8, 2011
International Registration Number	1051607

Owner (APPLICANT) BLEC, LLC LIMITED LIABILITY COMPANY NEVADA 401 N Tryon Street, Suite 1080
Charlotte NORTH CAROLINA 28202

**Assignment
Recorded** ASSIGNMENT RECORDED

**Attorney of
Record** Blake E. Vande Garde

**Prior
Registrations** 3846035

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CIGS" APART FROM THE MARK AS
SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL-2(F)

**Live/Dead
Indicator** LIVE

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BLU

Word Mark

BLU

Goods and Services

IC 034. US 002 008 009 017. G & S: Electronic cigarettes that utilize electronic cigarette chargers and not lighters; electronic cigarettes for use as an alternative to traditional cigarettes that utilize electronic cigarette chargers and not lighters; smokeless cigarette vaporizer pipes that utilize electronic cigarette chargers and not lighters. FIRST USE: 20090501. FIRST USE IN COMMERCE: 20090501

Standard Characters Claimed

Mark

Drawing Code

(4) STANDARD CHARACTER MARK

Serial Number

85131287

Filing Date

September 16, 2010

Current Basis

1A

Original Filing Basis

1A

Published for Opposition

November 8, 2011

Owner

(APPLICANT) BLEC, LLC LIMITED LIABILITY COMPANY NEVADA 401 N Tryon Street, Suite 1080 Charlotte NORTH CAROLINA 28202

Assignment Recorded

ASSIGNMENT RECORDED

Attorney of Record Blake E. Vande Garde
Prior Registrations 3846035
Type of Mark TRADEMARK
Register PRINCIPAL-2(F)
Live/Dead Indicator LIVE

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EXHIBIT D



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Word Mark BLU

Goods and Services IC 034. US 002 008 009 017. G & S: Electronic cigarettes that utilize electronic cigarette chargers and not lighters; electronic cigarettes for use as an alternative to traditional cigarettes that utilize electronic cigarette chargers and not lighters; smokeless cigarette vaporizer pipes that utilize electronic cigarette chargers and not lighters. FIRST USE: 20090501. FIRST USE IN COMMERCE: 20090501

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 01.15.25 - Coal; Dust; Light rays; Liquids, spilling; Pouring liquids; Sand; Spilling liquids
10.01.02 - Cigarettes; Holders, cigarette and cigar
26.05.21 - Triangles that are completely or partially shaded
26.11.21 - Rectangles that are completely or partially shaded

Serial Number 85131965

Filing Date September 17, 2010

Current Basis 1A

Original Filing Basis 1A

Published for Opposition November 29, 2011

International Registration Number 1058275

Owner (APPLICANT) BLEC, LLC LIMITED LIABILITY COMPANY NEVADA 401 N Tryon Street, Suite 1080 Charlotte NORTH CAROLINA 28202

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Blake E. Vande Garde

Prior Registrations 3846035

Description of Mark The color(s) blue, black, gray and white is/are claimed as a feature of the mark. The mark consists of the word "BLU" in stylized font whereby the letter "L" resembles a cigarette with blue light rays emitting therefrom that gradually become black towards the top and all letters appear in the color gray that gradually become white towards the top above a stylized partial reflection of the same all against a black field.

Type of Mark TRADEMARK

Register PRINCIPAL-2(F)-IN PART

Live/Dead Indicator LIVE

Distinctiveness

Limitation Statement as to "BLU"

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Record 1 out of 1

[TSDR](#) [ASSIGN Status](#) [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)

BLU CART

Word Mark BLU CART

Goods and Services IC 030. US 046. G & S: Cartridges sold filled with glycerin-based chemical flavorings in liquid form to produce the vapor and supply the flavoring for electronic cigarettes; chemical flavorings in liquid form used to refill electronic cigarette cartridges

IC 034. US 002 008 009 017. G & S: Electronic smoking accessories, namely, electronic cigarette flavor refill cartridges sold empty

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 86010437

Filing Date July 15, 2013

Current Basis 1B

Original Filing Basis 1B

Published for Opposition February 25, 2014

Owner (APPLICANT) Lorillard Technologies, Inc. CORPORATION DELAWARE 714 Green Valley Road Greensboro NORTH CAROLINA 27408

Attorney of

Record Eric T. Fingerhut

Prior Registrations 3846035

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CART" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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EXHIBIT F

Trademark Trial and Appeal Board Electronic Filing System. <http://estta.uspto.gov>ESTTA Tracking number: **ESTTA460445**Filing date: **03/07/2012**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	ZippMark, Inc.
Granted to Date of previous extension	03/28/2012
Address	1105 North Market Street, Suite 1300 Wilmington, DE 19801 UNITED STATES
Attorney information	David S. Elkins, Esq. Squire Sanders (US) LLP 600 Hansen Way Palo Alto, CA 94304 UNITED STATES david.elkins@squiresanders.com, trademark@squiresanders.com, joseph.grasser@squiresanders.com Phone:(650) 856-6500

Applicant Information

Application No	85131965	Publication date	11/29/2011
Opposition Filing Date	03/07/2012	Opposition Period Ends	03/28/2012
Applicant	BLEC, LLC 401 N Tryon Street, Suite 1080 Charlotte, NC 28202 UNITED STATES		

Goods/Services Affected by Opposition

Class 034. First Use: 2009/05/01 First Use In Commerce: 2009/05/01

All goods and services in the class are opposed, namely: Electronic cigarettes that utilize electronic cigarette chargers and not lighters; electronic cigarettes for use as an alternative to traditional cigarettes that utilize electronic cigarette chargers and not lighters; smokeless cigarette vaporizer pipes that utilize electronic cigarette chargers and not lighters

Applicant Information

Application No	85131287	Publication date	11/08/2011
Opposition Filing Date	03/07/2012	Opposition Period Ends	
Applicant	BLEC, LLC 401 N Tryon Street, Suite 1080 Charlotte, NC 28202 UNITED STATES		

Goods/Services Affected by Opposition

Class 034. First Use: 2009/05/01 First Use In Commerce: 2009/05/01
All goods and services in the class are opposed, namely: Electronic cigarettes that utilize electronic cigarette chargers and not lighters; electronic cigarettes for use as an alternative to traditional cigarettes that utilize electronic cigarette chargers and not lighters; smokeless cigarette vaporizer pipes that utilize electronic cigarette chargers and not lighters

Applicant Information

Application No	85092665	Publication date	11/08/2011
Opposition Filing Date	03/07/2012	Opposition Period Ends	
Applicant	BLEC, LLC 401 N Tryon Street, Suite 1080 Charlotte, NC 28202 UNITED STATES		


Goods/Services Affected by Opposition


Class 034. First Use: 2009/05/01 First Use In Commerce: 2009/05/01
All goods and services in the class are opposed, namely: Electronic cigarettes containing tobacco substitutes not for medical purposes that utilize electronic cigarette chargers and not lighters; electronic cigarettes for use as an alternative to traditional cigarettes that utilize electronic cigarette chargers and not lighters; smokeless cigarette vaporizer pipes that utilize electronic cigarette chargers and not lighters


Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)


Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	3299190	Application Date	06/30/2005
Registration Date	09/25/2007	Foreign Priority Date	NONE
Word Mark	BLU		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 2005/06/30 First Use In Commerce: 2007/03/16 Lighters not of precious metal		


U.S. Registration No.	3469390	Application Date	06/30/2005
Registration Date	07/15/2008	Foreign Priority Date	NONE
Word Mark	BLU		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 2007/04/24 First Use In Commerce: 2007/04/24 Hand-held cigarette and utility lighters of precious metal		

U.S. Registration No.	3606674	Application Date	06/19/2007
Registration Date	04/14/2009	Foreign Priority Date	NONE
Word Mark	BLU		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 004. First use: First Use: 2007/10/02 First Use In Commerce: 2007/10/02 FUEL FOR LIGHTERS		

U.S. Registration No.	3680360	Application Date	06/19/2007
Registration Date	09/08/2009	Foreign Priority Date	NONE
Word Mark	BLU		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 034. First use: First Use: 2007/03/16 First Use In Commerce: 2007/03/16 LIGHTERS NOT OF PRECIOUS METAL; LIGHTERS OF PRECIOUS METAL

U.S. Registration No.	3299195	Application Date	07/01/2005
Registration Date	09/25/2007	Foreign Priority Date	NONE
Word Mark	ZIPPOBLU		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 2005/07/01 First Use In Commerce: 2007/03/16 Lighters not of precious metal		

U.S. Registration No.	3464056	Application Date	07/01/2005
Registration Date	07/08/2008	Foreign Priority Date	NONE
Word Mark	ZIPPOBLU		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 014. First use: First Use: 2007/04/24 First Use In Commerce: 2007/04/24 Cigarette and utility lighters of precious metal
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Attachments	78662091#TMSN.jpeg (1 page)(bytes) 78662100#TMSN.jpeg (1 page)(bytes) 77209860#TMSN.jpeg (1 page)(bytes) 77209871#TMSN.jpeg (1 page)(bytes) 78662768#TMSN.jpeg (1 page)(bytes) 78662779#TMSN.jpeg (1 page)(bytes) Zippmark's Combined Notice of Opposition.pdf (7 pages)(3887602 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/david elkins/
Name	David S. Elkins, Esq.
Date	03/07/2012

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial Nos. 85/131965, 85/131287, and 85/092,665
Published in the Official Gazettes of November 8 and November 29, 2011
Marks: **BLU and Design, BLU, and BLU CIGS**

ZIPPMARK, INC.,

Opposer,

v.

BLEC, LLC,

Applicant.

COMBINED NOTICE OF OPPOSITION

ZippMark, Inc., (“Opposer” or “ZippMark”), a corporation organized under the laws of Delaware and located at 1105 North Market Street, Suite 1300, Wilmington, DE 19801, believes it will be damaged by registration of the applied-for trademarks BLU and design, BLU, and BLU CIGS shown in Application Serial Nos. 85/131965, 85/131287, and 85/092,665, and it opposes the same in this Combined Notice of Opposition under Trademark Board Manual for Procedure §305 *et seq.* and 37 CFR §2.104(b). In particular, ZippMark believes that these registrations would give rise a likelihood of confusion with its existing domestic and international BLU registered and common law trademarks in violation of 15 U.S.C. §§ 1052(d) and §43(a).

The grounds for the opposition are as follows:

1. ZippMark and its related company Zippo Manufacturing Co. (“Zippo”), to whom ZippMark licenses its trademarks, offer a variety of cigarette and utility lighters under its world

famous ZIPPO mark and, more recently, under its distinctive BLU trademarks as well as a number of registered marks incorporating the BLU component.

2. Since prior to the filing date of the application opposed herein, ZippMark and Zippo have exclusively distributed, advertised and sold in United States commerce a number of cigarette and utility lighter products and related goods under its BLU trademarks. As a result, ZippMark has common law rights to BLU.

3. ZippMark also owns a number of trademark registrations for BLU whose marks incorporate the BLU component that are registered with the United States Patent and Trademark Office, including without limitation U.S. Registration Nos. 3299190, 3299195, 3464056, 3469390, 3606674, and 3680360 (collectively, the “Zippo BLU Registrations”). See Ex. A (providing TARR records of relevant ZippMark registrations). These registrations cover:

- a. U.S. Registration No. 3299190 for BLU and design for lighters not of precious metal in International Class 034, filed on June 30, 2005 and registered September 25, 2007;
- b. U.S. Registration No. 3469390 for BLU and design for hand-held cigarette and utility lighters of precious metal in International Class 014, filed on June 30, 2005 and registered July 15, 2008;
- c. U.S. Registration No. 3606674 for BLU for fuel for lighters in International Class 004, filed on June 19, 2007 and registered on April 14, 2009;
- d. U.S. Registration No. 3680360 for BLU for lighters not of precious metal and lighters of precious metal in International Class 034, first used in

commerce on March 16, 2007, filed on June 19, 2007, and registered on September 8, 2009;

- e. U.S. Registration No. 3299195 for ZIPPOBLU and design for lighters not of precious metal in International Class 034, filed on July 1, 2005 and registered September 25, 2007; and
- f. U.S. Registration No. 3464056 for ZIPPOBLU and design for cigarette and utility lighters of precious metal in International Class 014, filed on July 1, 2005 and registered July 8, 2008.

These registrations are valid and subsisting and are owned by ZippMark.

4. ZippMark and its related companies have sold significant numbers of Zippo lighters and related products bearing the Zippo BLU marks throughout the United States for several years. ZippMark and its related companies have also extensively advertised and promoted the Zippo BLU marks and products in the United States and throughout the world. In addition, products bearing the BLU mark, as well as the BLU mark itself, have been the subject of press reports.

5. By virtue of such extensive domestic and international sales, advertising and promotion, and press coverage, the Zippo BLU Marks represent extremely valuable goodwill to ZippMark.

6. On July 26, September 16, and September 17, 2010, Applicant filed three applications for registration in International Class 034:

- a. July 26, 2010: Application for BLU CIGS for “electronic cigarettes containing tobacco substitutes not for medical purposes that utilize electronic cigarette chargers and not lighters; electronic cigarettes for use

as an alternative to traditional cigarettes that utilize electronic cigarette chargers and not lighters; smokeless cigarette vaporizer pipes that utilize electronic cigarette chargers and not lighters”. This application was assigned Application Serial No. 85/092665.

- b. September 16, 2010: Application for BLU for “electronic cigarettes that utilize electronic cigarette chargers and not lighters; electronic cigarettes for use as an alternative to traditional cigarettes that utilize electronic cigarette chargers and not lighters; smokeless cigarette vaporizer pipes that utilize electronic cigarette chargers and not lighters”. This application was assigned Application Serial No. 85/131287.
- c. September 17, 2010: Application for BLU and design for “electronic cigarettes that utilize electronic cigarette chargers and not lighters; electronic cigarettes for use as an alternative to traditional cigarettes that utilize electronic cigarette chargers and not lighters; smokeless cigarette vaporizer pipes that utilize electronic cigarette chargers and not lighters”. This application was assigned Application Serial No. 85/131965.

7. Applicant filed each of these applications on the basis of use claimed in United States commerce since May 1, 2009, pursuant to 15. U.S.C. 1152(a).

8. The Examining Attorney initially refused each of the applied-for marks based on ZippMark’s Zippo BLU marks, emphasizing the similarity between the applied-for marks and the Zippo BLU marks would cause confusion as to the source of Applicant’s goods. Applicant attempted to rebut the refusal by arguing that the applied-for marks and the Zippo BLU marks were dissimilar in appearance and connotation, that the goods to which the various marks relate

were dissimilar, and that the purchasers of Applicant's products are sophisticated and not likely to be confused. Upon these arguments, the Examining Attorney revoked the initial refusal.

9. That revocation notwithstanding, the Examining Attorney was initially correct in that Applicant's proposed use of the applied-for marks is indeed likely to (a) cause confusion, mistake or deception with the Zippo BLU marks, and (b) result in the mistaken belief that Applicant or its BLU devices are in some way legitimately connected with, licensed or approved by ZippMark. The applied-for mark is nearly identical in sound, appearance, meaning, connotation and commercial impression to Opposer's existing trade name and trademarks. Moreover, the goods to which the marks relate are similar such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods come from a common source.

10. Upon information and belief, neither Applicant nor any predecessor or related company of Applicant made commercial use of the applied-for marks before May 1, 2009, the first use date claimed in the applications. Upon information and belief, neither Applicant nor any predecessor or related company of Applicant made commercial use of the applied-for marks prior to the stated first use in commerce date of May 1, 2009.

11. Applicant's proposed use of and application to register the applied-for marks is without Opposer's consent or permission.

12. This Opposition is timely, as Opposer has received extensions of time up to and including March 7, 2012, within which to file this Opposition.

13. This Opposition is being filed electronically through ESTTA, pursuant to the Board's rules. The filing fees are being paid through ESTTA.

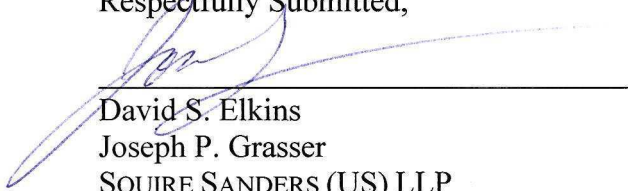
WHEREFORE, Opposer ZippMark, Inc. believes that it would be damaged by the registration by Applicant of the applied-for marks for the goods identified in Application Serial Nos. 85/131965, 85/131287, and 85/092,665, and prays that this Opposition be sustained and that said Applications be refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. §§ 1052(d).

David S. Elkins and Joseph P. Grasser, members of the State Bar of California and the firm of Squire Sanders (US) LLP, 600 Hansen Way, Palo Alto, California 94304, telephone (650) 856-6500, facsimile (650) 843-8777; and

The U.S. Patent and Trademark Office and the Trademark Trial and Appeal Board hereby are authorized to charge to Squire Sanders (US) LLP's Deposit Account No. 07-1850 the required filing fees plus any deficiencies or additional amounts due for this Notice of Opposition.

Date: March 7, 2012

Respectfully Submitted,



David S. Elkins
Joseph P. Grasser
SQUIRE SANDERS (US) LLP
600 Hansen Way
Palo Alto, California 94304
Telephone: (650) 856-6500
Facsimile: (650) 843-8777

Attorneys for Opposer
ZIPPMARK, INC.

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and employed in Santa Clara County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 600 Hansen Way, Palo Alto, California. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On March 7, 2012, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

COMBINED NOTICE OF OPPOSITION

in a sealed envelope, postage fully paid, addressed as follows:

Blake E. Vande Garde
Hammer & Associates, P.C.
3125 Springbank Lane Suite G
Charlotte, NC 28226
Phone Number: 704-927-0400
Fax Number: 704-927-0485

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on March 7, 2012, at Palo Alto, California.

By



Joseph P. Grasser

EXHIBIT G

Trademark Trial and Appeal Board Electronic Filing System. <http://estta.uspto.gov>ESTTA Tracking number: **ESTTA594380**Filing date: **03/24/2014**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	ZippMark, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	1105 North Market Street, Suite 1300 Wilmington, DE 19801 UNITED STATES		

Correspondence information	David S. Elkins Squire Sanders (US) LLP 600 Hansen Way Palo Alto, CA 94304 UNITED STATES David.Elkins@squiresanders.com, Joseph.Grasser@squiresanders.com, Amanpreet.Kaur@squiresanders.com, trademark@squiresanders.com Phone:650.856.6500
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Applicant Information

Application No	86010437	Publication date	02/25/2014
Opposition Filing Date	03/24/2014	Opposition Period Ends	03/27/2014
Applicant	Lorillard Technologies, Inc. 714 Green Valley Road Greensboro, NC 27408 GERMANY		

Goods/Services Affected by Opposition


Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Cartridges sold filled with glycerin-based chemical flavorings in liquid form to produce the vapor and supply the flavoring for electronic cigarettes; chemicalflavorings in liquid form used to refill electronic cigarette cartridges
Class 034. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Electronic smoking accessories, namely,electronic cigarette flavor refill cartridges sold empty


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3299190	Application Date	06/30/2005
Registration Date	09/25/2007	Foreign Priority	NONE


		Date	
Word Mark	BLU		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 2005/06/30 First Use In Commerce: 2007/03/16 Lighters not of precious metal		

U.S. Registration No.	3469390	Application Date	06/30/2005
Registration Date	07/15/2008	Foreign Priority Date	NONE
Word Mark	BLU		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 2007/04/24 First Use In Commerce: 2007/04/24 Hand-held cigarette and utility lighters of precious metal		

U.S. Registration No.	3606674	Application Date	06/19/2007
Registration Date	04/14/2009	Foreign Priority Date	NONE
Word Mark	BLU		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 004. First use: First Use: 2007/10/02 First Use In Commerce: 2007/10/02 FUEL FOR LIGHTERS

U.S. Registration No.	3680360	Application Date	06/19/2007
Registration Date	09/08/2009	Foreign Priority Date	NONE
Word Mark	BLU		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 2007/03/16 First Use In Commerce: 2007/03/16 LIGHTERS NOT OF PRECIOUS METAL; LIGHTERS OF PRECIOUS METAL		

U.S. Registration No.	3299195	Application Date	07/01/2005
Registration Date	09/25/2007	Foreign Priority Date	NONE
Word Mark	ZIPPOBLU		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 034. First use: First Use: 2005/07/01 First Use In Commerce: 2007/03/16 Lighters not of precious metal

U.S. Registration No.	3464056	Application Date	07/01/2005
Registration Date	07/08/2008	Foreign Priority Date	NONE

Word Mark	ZIPPOBLU
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 014. First use: First Use: 2007/04/24 First Use In Commerce: 2007/04/24 Cigarette and utility lighters of precious metal

Related Proceedings	Combined Opp No. 91204186 to BLU, BLU & Design and BLU CIGS
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Attachments	78662091#TMSN.jpeg(bytes) 78662100#TMSN.jpeg(bytes) 77209860#TMSN.jpeg(bytes) 77209871#TMSN.jpeg(bytes) 78662768#TMSN.jpeg(bytes) 78662779#TMSN.jpeg(bytes) Notice_of_Opposition_to_Application_for_BLU_CART.pdf(12887 bytes) Exhibit A.pdf(421032 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/David S. Elkins/
Name	David S. Elkins
Date	03/24/2014

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 86010437
Published in the Official Gazette of February 25, 2014
Word Mark: BLU CART

ZIPPMARK, INC.,

Opposer,

v.

LORILLARD TECHNOLOGIES, INC.,

Applicant.

NOTICE OF OPPOSITION

ZippMark, Inc., (“Opposer” or “ZippMark”), a corporation organized under the laws of Delaware and having a principal place of business located at 1105 North Market Street, Suite 1300, Wilmington, DE 19801, opposes Applicant Lorillard Technologies, Inc.’s (“Applicant” or “Lorillard”) registration of the mark BLU CART, Application Serial No. 86010437 (“opposed mark”). ZippMark opposes such registration pursuant to 15 U.S.C. § 1063(a) and Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) §303.01 because Opposer has established extensive rights in its registered BLU mark for goods similar to those that would be covered by Applicant’s registration. In particular, Applicant’s registration of BLU CART would likely confuse consumers into believing that Applicant’s products are associated with or sponsored by ZippMark, or that Applicant’s use of the opposed mark is otherwise authorized by ZippMark. As either circumstance would damage ZippMark, registration of the opposed mark would violate 15 U.S.C. §§ 1052(d) and 1125(a).

ZippMark basis its Opposition on the following:

1. ZippMark and its related company, Zippo Manufacturing Co. (“Zippo”), manufacture and offer for sale their world famous flip-top lighters and other goods under the equally famous ZIPPO trade name. The company has done so for nearly eight decades.
2. As detailed below, ZippMark and Zippo have expanded into new designs using their distinctive BLU trademarks.
3. ZippMark and Zippo have been using the BLU trademarks in exclusively distributing, advertising and selling their lighters and other related products for the past several years; their first use long predates the application at issue. As a result, ZippMark has developed common law rights to BLU.
4. ZippMark also owns six trademark registrations for BLU in various forms and classes, including:
 - a. U.S. Registration No. 3299190 for BLU and design for lighters not of precious metal in International Class 034, filed on June 30, 2005 and registered on September 25, 2007;
 - b. U.S. Registration No. 3469390 for BLU and design for hand-held cigarette and utility lighters of precious metal in International Class 014, filed on June 30, 2005 and registered on July 15, 2008;
 - c. U.S. Registration No. 3606674 for BLU for fuel for lighters in International Class 004, filed on June 19, 2007 and registered on April 14, 2009;
 - d. U.S. Registration No. 3680360 for BLU for lighters not of precious metal and lighters of precious metal in International Class 034, first used in

commerce on March 16, 2007, filed on June 19, 2007, and registered on September 8, 2009;

- e. U.S. Registration No. 3299195 for ZIPPOBLU and design for lighters not of precious metal in International Class 034, filed on July 1, 2005 and registered on September 25, 2007; and
- f. U.S. Registration No. 3464056 for ZIPPOBLU and design for cigarette and utility lighters of precious metal in International Class 014, filed on July 1, 2005 and registered on July 8, 2008.

(collectively the “Zippo BLU registrations”). *See Ex. A* (copies of the registration certificates of relevant ZippMark registrations).

5. ZippMark and its related companies have extensively marketed and sold Zippo lighters and related products bearing the Zippo BLU trademarks throughout the United States and internationally for several years. Due in part to Zippo’s fame, products bearing the BLU mark, as well as the BLU mark itself, have garnered press coverage.

6. By virtue of such extensive domestic and international sales, advertising, promotion, and press coverage, the Zippo BLU marks have brought, and continue to bring, significant goodwill to ZippMark.

7. Applicant filed an application for BLU CART on July 15, 2013 for the following goods and services: (1) “cartridges sold filled with glycerin-based chemical flavorings in liquid form to produce the vapor and supply the flavoring for electronic cigarettes; chemical flavorings in liquid form used to refill electronic cigarette cartridges” in International Class 030 and (2) “electronic smoking accessories, namely, electronic cigarette flavor refill cartridges sold empty” in International Class 034.

8. Applicant's basis for filing the present application is an intent to use, with no present use in commerce.

9. Applicant's proposed use of the opposed mark is likely to (a) cause confusion, mistake or deception with the Zippo BLU marks, and (b) result in the incorrect perception or belief that Applicant or its "BLU CART" products are in some way associated with or sponsored by ZippMark or Zippo. The first word of the opposed mark is identical in sound, appearance, meaning, connotation and commercial impression to the Zippo BLU registrations. The addition of "CART" is of little significance to the commercial impression, particularly because it is descriptive of the goods – "CART" being an abbreviated form of "cartridges," the product to which Applicant seeks to apply its BLU CART mark. Also critical is the fact that both Applicant and Opposer market to and serve very similar consumer groups with their respective products – principally individuals who smoke.

10. Upon information and belief, neither Applicant nor a predecessor or related company made commercial use of the opposed mark before the date of any of the Zippo BLU registrations.

11. Applicant's proposed use and application to register the opposed mark is without Opposer's consent or permission.

WHEREFORE, Opposer ZippMark, Inc. would be damaged by the registration of Applicant's mark for the goods identified in Application Serial No. 86010437, and prays that this Opposition be sustained and that the current Application be refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. §§ 1052(d).

Opposer hereby appoints David S. Elkins, Joseph P. Grasser and Amanpreet Kaur, all members of the Bar of the State of California and all of the law firm Squire Sanders (US) LLP,

600 Hansen Way, Palo Alto, California 94304, telephone (650) 856-6500, facsimile (650) 843-8777, to transact all business in the Patent and Trademark Office in connection with the above opposition proceeding. Please address all correspondence to:

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David.Elkins@squiresanders.com
Joseph.Grasser@squiresanders.com
Amanpreet.Kaur@squiresanders.com
trademark@squiresanders.com

Date: March 24, 2014

Respectfully Submitted,

By s/David S. Elkins/
David S. Elkins
Joseph P. Grasser
Amanpreet Kaur
SQUIRE SANDERS (US) LLP
600 Hansen Way
Palo Alto, California 94304
Telephone: (650) 856-6500
Facsimile: (650) 843-8777

Attorneys for Opposer
ZIPPMARK, INC.

PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing **NOTICE OF OPPOSITION** has been served on Applicant LORILLARD TECHNOLOGIES, INC. by mailing same via First Class Mail, postage prepaid, addressed to Applicant's counsel as follows:

Eric T. Fingerhut, Esq.
Dykema Gossett PLLC
1300 I Street NW, Suite 300
Washington, D.C. 20005-3314

this 24th day of March 2014.

By: /Z Simova/
Zlata Simova

EXHIBIT A

Int. Cl.: 34

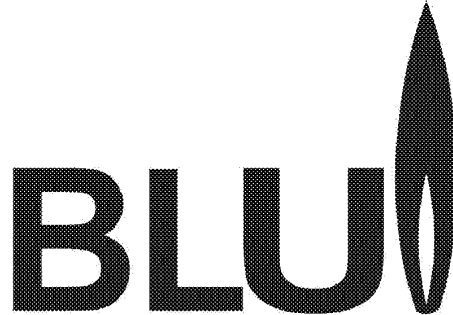
Prior U.S. Cls.: 2, 8, 9, and 17

United States Patent and Trademark Office

Reg. No. 3,299,190

Registered Sep. 25, 2007

**TRADEMARK
PRINCIPAL REGISTER**



ZIPPMARK, INC. (DELAWARE CORPORATION)
103 SPRINGER BUILDING
3411 SILVERSIDE ROAD
WILMINGTON, DE 19810

FIRST USE 6-30-2005; IN COMMERCE 3-16-2007.

SN 78-662,091, FILED 6-30-2005.

FOR: LIGHTERS NOT OF PRECIOUS METAL, IN
CLASS 34 (U.S. CLS. 2, 8, 9 AND 17).

KEVON CHISOLM, EXAMINING ATTORNEY

Int. Cl.: 34

Prior U.S. Cls.: 2, 8, 9, and 17

Reg. No. 3,299,195

United States Patent and Trademark Office

Registered Sep. 25, 2007

**TRADEMARK
PRINCIPAL REGISTER**



ZIPPMARK, INC. (DELAWARE CORPORATION)
103 SPRINGER BUILDING
3411 SILVERSIDE ROAD
WILMINGTON, DE 19810

OWNER OF U.S. REG. NOS. 2,001,509, 2,116,481,
AND OTHERS.

FOR: LIGHTERS NOT OF PRECIOUS METAL, IN
CLASS 34 (U.S. CLS. 2, 8, 9 AND 17).

SN 78-662,768, FILED 7-1-2005.

FIRST USE 7-1-2005; IN COMMERCE 3-16-2007.

KEVON CHISOLM, EXAMINING ATTORNEY

Int. Cl.: 14

Prior U.S. Cls.: 2, 27, 28, and 50

Reg. No. 3,464,056

United States Patent and Trademark Office

Registered July 8, 2008

**TRADEMARK
PRINCIPAL REGISTER**



ZIPPMARK, INC. (DELAWARE CORPORATION)
SUITE 1300
1105 NORTH MARKET STREET
WILMINGTON, DE 19801

FIRST USE 4-24-2007; IN COMMERCE 4-24-2007.

OWNER OF U.S. REG. NOS. 2,001,509, 2,116,481,
AND OTHERS.

FOR: CIGARETTE AND UTILITY LIGHTERS OF
PRECIOUS METAL, IN CLASS 14 (U.S. CLS. 2, 27, 28
AND 50).

SN 78-662,779, FILED 7-1-2005.

KEVON CHISOLM, EXAMINING ATTORNEY

Int. Cl.: 14

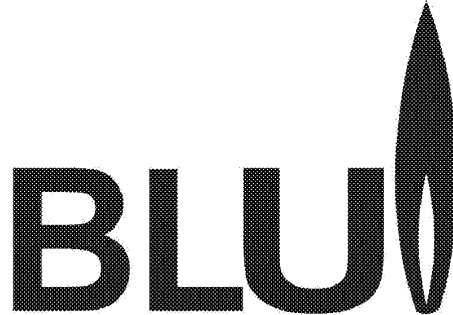
Prior U.S. Cls.: 2, 27, 28, and 50

Reg. No. 3,469,390

United States Patent and Trademark Office

Registered July 15, 2008

**TRADEMARK
PRINCIPAL REGISTER**



ZIPPMARK, INC. (DELAWARE CORPORATION)
SUITE 1300
1105 NORTH MARKET STREET
WILMINGTON, DE 19801

FIRST USE 4-24-2007; IN COMMERCE 4-24-2007.

SN 78-662,100, FILED 6-30-2005.

FOR: HAND-HELD CIGARETTE AND UTILITY
LIGHTERS OF PRECIOUS METAL, IN CLASS 14
(U.S. CLS. 2, 27, 28 AND 50).

ATTIYA MALIK, EXAMINING ATTORNEY

Int. Cl.: 4

Prior U.S. Cls.: 1, 6, and 15

United States Patent and Trademark Office

Reg. No. 3,606,674

Registered Apr. 14, 2009

**TRADEMARK
PRINCIPAL REGISTER**

BLU

ZIPPMARK, INC. (DELAWARE CORPORATION)
1105 NORTH MARKET STREET
SUITE 1300
WILMINGTON, DE 19801

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

FOR: FUEL FOR LIGHTERS, IN CLASS 4 (U.S.
CLS. 1, 6 AND 15).

SN 77-209,860, FILED 6-19-2007.

FIRST USE 10-2-2007; IN COMMERCE 10-2-2007.

MICHAEL GAAFAR, EXAMINING ATTORNEY

Int. Cl.: 34

Prior U.S. Cls.: 2, 8, 9, and 17

Reg. No. 3,680,360

United States Patent and Trademark Office

Registered Sep. 8, 2009

**TRADEMARK
PRINCIPAL REGISTER**

BLU

ZIPPMARK, INC. (DELAWARE CORPORATION)
1105 NORTH MARKET STREET
SUITE 1300
WILMINGTON, DE 19801

FOR: LIGHTERS NOT OF PRECIOUS METAL;
LIGHTERS OF PRECIOUS METAL, IN CLASS 34
(U.S. CLS. 2, 8, 9 AND 17).

FIRST USE 3-16-2007; IN COMMERCE 3-16-2007.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,299,190 AND
3,469,390.

SN 77-209,871, FILED 6-19-2007.

MICHAEL GAAFAR, EXAMINING ATTORNEY